

## REMARKS

This Amendment is submitted in response to the non-final Office action dated November 28, 2007, setting forth a shortened three month statutory period for reply with a three month extension of time expiring on May 28, 2007. Prior to entry of this Response, claims 1-38 and 41-43 are pending in the application, with claims 1, 14, and 34 being independent claims. Claim 15 is canceled and claims 45-47 are new. Claims 16, 19, 22, 25, 28, and 31 are amended to revise the dependency to claim 14. Hence, claims 1-14, 16-38, 41-43 and 45-47 are now pending.

### I. **Non-Statutory Double Patenting**

A terminal disclaimer concerning co-pending application 11/871,316 is submitted herewith to overcome the double patenting rejection.

### II. **Rejections of claims 1-13 under 35 U.S.C. § 102**

Claims 1-13 are rejected under 35 U.S.C. § 102(b) as anticipated by published U.S. patent application 2003/00118558 to Heffner et al (hereinafter "Heffner"). Claim 1 is an independent claim from which claims 2-13, 41 and 45-47 depend. Accordingly, our analysis begins with claim 1. Independent claim 1 has been amended to include the limitation of "providing a loss mitigation action for the securitized loan pool based on an assessment of each of the at least one loans having the characteristic of the at least one applied risk filter." This amendment is made to refine the invention set out in claim 1 to reflect that the application of risk filters may be followed by a provision of a loss mitigation action for the securitized loan pool. Despite the expansive and detailed disclosure of Heffner, some 37 sheets of drawings and some 398 paragraphs of description, Heffner does not address the notion of providing a loss mitigation action for a securitized loan pool. Hence, Heffner does not anticipate claim 1.

Heffner does discuss the notion of securitization of a loan pool. Particularly, at paragraph 0319, Heffner discloses:

As shown by a block 320 in FIG. 3, the investors can access system 200 via workstation 280e look for loan pools for sale by mortgage bankers to purchase. Using trading subsystem 210, investors can make bids on loan pools for sale on the system 200. The investors then use collections of these purchased loan pools to create mortgage-backed securities, as discussed in detail above. The investors can publish these mortgage-backed securities on system 200 via workstation 280e for sale to interested buyers.

Hence, to the extent Heffner is concerned with securitized loan pools, the concern is in the area of providing information to investors to make bids on a pool of loans for the purpose of securitization. Heffner does not appear to be concerned with providing a loss mitigation action for a securitized loan pool as set forth in amended claim 1.

For at least the reasons set forth above, Heffner does not anticipate claim 1 of the present application. Claim 2-13, 41, and new claims 45-47 depend from and include all limitations of claim 1. Thus, claims 2-13, 41, and 45-47 are not anticipated by and are patentable over Heffner for at least the same reasons as claim 1.

### **III. Rejection of claims 14-20, 22-38 and 41-43 under 35 U.S.C. § 103(a)**

Claims 14-20, 22-38 and 41-43 are rejected under 35 U.S.C. § 103(a) as being unpatentable under Heffner as applied to claim 1 and further in view of U.S. Patent No. 5,939,775 to McCauley (hereinafter "McCauley"). The Office action relies on McCauley to teach the liquidation time aspect of claim 14. It is respectfully submitted that McCauley does *not* disclose "obtaining an estimated liquidation time between a last interest paid date for the loan and a receipt of the net proceeds from the sale of the property, wherein the operation of obtaining an estimated liquidation time includes applying a liquidation time value decision tree" as required by amended claim 14. This limitation was originally set forth in claim 15, which is now canceled. The Office action relies on various sections of McCauley as disclosing the recited limitation, none of which are sufficient.

To the extent McCauley may disclose any aspect of obtaining an estimated liquidation time, McCauley discusses using "a table in loan experience database for historical average fees and costs for the state in which the property is located" as part of estimated foreclosure fees and costs. See McCauley, col. 8, line 22-25. Additionally, McCauley references the use of an average time to obtain foreclosure timing information. See *McCauley col. 8, line 39-42 ("the average time a loan takes to foreclose in New Jersey is about 500 days")*. Hence, in the REO case, McCauley does not disclose obtaining an estimated liquidation time using a liquidation time value decision tree. Rather, McCauley discusses accessing a database to obtain historical average foreclosure timing for a geographic region.

Particularly, McCauley discusses that in the short payoff, deed-in-lieu, charge off and loan modification cases, "the system estimates the date on which these fees and costs [of foreclosure] will stop accruing. For a short payoff, for example, the system projects, using information in loan experience database 352, that it will typically take 45 days from approval for

the deal to close. The system then prorates the fees and costs using the number of days the loan will actually have been in foreclosure relative to the historical average time a loan in that state would spend in foreclosure." *McCauley, col. 8, lines 28-32*. McCauley is silent as to how the 45 day number is obtained besides indicating the "use of information in the database."

McCauley does not disclose the use of a decision tree to obtain liquidation timing for short payoff, deed-in-lieu, charge off and loan modification cases. Moreover, the use of a liquidation decision tree is not inherent to McCauley because McCauley could simply and likely uses historical timing values as is taught with the case of foreclosure timing.

Accordingly, for at the least these reasons, McCauley does not disclose each and every limitation of claim 14 and is therefore insufficient to disclose the recited limitation for purposes of combining with Heffner to render claim 14 obvious under 35 U.S.C. § 103. Claims 16-34 and 42 depend from and include all limitations of claim 14. Thus, claims 16-34 and 42 are patentable over the combination of Heffner and McCauley for at least the same reasons as claim 1.

#### **IV. Rejection of claims 34-38 under 35 U.S.C. § 103(a)**

Claim 34 is in an independent claim from which claims 35-38 depend. We note that in paragraphs 28-30 of the Office action (where claims 34-38 are discussed), there is no mention of where, in either Heffner or McCauley, the claim 36 limitations of "obtaining a probability of loss for each of the at least one loans; and applying at least one probability of loss filter to the electronic record of the loan pool to identify each of the at least one loans with a specified probability of loss" disclosed. Accordingly, before it will be possible to completely assess the merits of the rejections pertaining to claims 34-38, please provide an analysis of how claim 36 is disclosed by the recited references.

#### **V. Conclusion**

For at least the reasons recited above, pending claims 1-14, 16-38, 41-43, and new claims 45-47 are believed in form for allowance and such indication is respectfully requested.

Further, as set out above, the Office action fails to provide any indication as to how the limitations of claim 36 are taught by Heffner or McCauley. Thus, such analysis is further requested. If the Examiner is unable to make out a case that the limitations of claim 36 are taught by the applied references, then an indication of allowability is respectfully requested.

A petition for a three month extension of time and a Terminal Disclaimer accompany this Amendment and Response. Accordingly, please charge Deposit Account number 04-1415 in

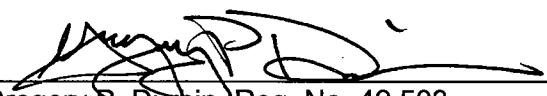
Appl. No. 09/991,762  
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the amount of \$1,050.00 for the three month extension of time fee and \$130.00 for the terminal disclaimer fee. The Assignee believes no further fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

If the Examiner should require any additional information or amendment, please contact the undersigned attorney.

Respectfully submitted,

Date: May 28, 2008



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